

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TENNESSEE
3 CHATTANOOGA

4 SHANDLE MARIE RILEY,

5 Plaintiff,

6 v.

Case No. 1:19-cv-304-TRM-CHS

7 HAMILTON COUNTY GOVERNMENT,

8 DANIEL WILKEY,

9 individually and in his capacity as deputy sheriff
10 for Hamilton County Government, and

11 JACOB GOFORTH,

12 individually and in his capacity as deputy sheriff
13 for Hamilton County Government,

14 Defendants.

15
16 The above-captioned cause came on for
17 hearing when and where the following proceedings which
18 were transcribed from an audio recording were had:

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1 **A P P E A R A N C E S**

2 For the Plaintiffs:

3 **JOHN C. CAVETT, JR.**

4 **WILLIAM EUGENE KLAVER**

5 **JAMES F. EXUM**

6 **ROBIN FLORES**

7 **W. GERALD TIDWELL, JR.**

8 **JAMES MICAH GUSTER**

9
10 For the Defendants:

11 **R. DEE HOBBS**

12 **SHARON MILLING**

1 P R O C E E D I N G S
23 THE COURT: First of all, is the connection good?
4 Is it -- is anyone having trouble hearing me?

5 UNIDENTIFIED MALE SPEAKER: I'm not, sir.

6 THE COURT: Okay.

7 UNIDENTIFIED MALE SPEAKER: No, sir.

8 THE COURT: Unless -- okay. I don't need
9 responses from each of you, but do let us know if you're
10 having trouble hearing at any point during the proceedings
11 today.12 Second thing I will tell you is that the
13 courtroom is empty. Everyone has elected, I believe, to
14 participate by telephone including I believe we have -- we
15 may have some reporters -- news reporters in. Everybody
16 will identify themselves in a moment.17 I wanted to talk about some house rules to make
18 sure that everything proceeds smoothly. Number one, I'm
19 going to ask people each time they speak to first identify
20 themselves even if you've just spoken, you know, a moment
21 before and then somebody else has spoken, I need you to
22 identify yourselves each time that you're speaking so that
23 we can keep the cast of characters straight.24 The -- let me ask this, is there a court reporter
25 covering this hearing today?

1 UNIDENTIFIED MALE SPEAKER: I do not have
2 one, Judge.

3 THE COURT: There's no court reporter. Okay.
4 All right. Are there any news reporters on the line
5 with us?

6 MR. JACKSON: Yes, this is Dan Jackson with
7 Courthouse News Service.

8 UNIDENTIFIED FEMALE SPEAKER: This is
9 Roseanne --

10 THE COURT: Okay.

11 UNIDENTIFIED FEMALE SPEAKER: (Inaudible)
12 Free Press.

13 THE COURT: Mr. Jackson, thank you. And I'm
14 sorry, I spoke over you, ma'am. What's your name?

15 UNIDENTIFIED FEMALE SPEAKER: Roseanne
16 (inaudible due to cross talking) with the Times Free
17 Press.

18 THE COURT: Okay. Thank you. So at the
19 outset, again, just doing some housekeeping.
20 Mr. Jackson had reached out to the Court yesterday
21 because he wanted to know whether he could attend in
22 person or participate by telephone. And we -- I
23 called him and laid out those options. Mr. Jackson
24 raised a good question that I was not in a position to
25 address when he asked me last night. He is aware of

1 the local rule that prohibits bringing a recording
2 device into the courtroom and activating it and
3 recording the proceedings. And he asked me whether
4 since he's not going to be in the courthouse he could
5 record the proceedings on his iPhone or recording --
6 otherwise on a recording device.

7 Frankly, I never thought about that and
8 looked at the local rules and then put out an email to
9 the other judges in our -- some -- most of the other
10 judges in our district and division.

11 And what followed was a robust discussion of
12 the topic, but for -- the judge has discretion, and
13 the consensus among the judges is that we should treat
14 these telephonic hearings, which are being done right
15 now because of the exigent circumstances involving the
16 Covid 19 pandemic, we should treat the telephonic
17 hearings the same as we treat in-court hearings.

18 And consequently I would ask the reporters to
19 turn -- to off their recorders and not -- not record
20 the hearing today. We would extend the local rule to
21 these telephonic hearings. So I'll put you on your
22 honor, news reporters, and just ask you to do that.
23 So --

24 MR. JACKSON: That's understood.

25 THE COURT: The next thing I'd like to do is

1 have the attorneys and any other participants identify
2 themselves. But why don't we start with the
3 Plaintiff's attorneys and any folks who are here as
4 Plaintiffs or Plaintiff representatives.

5 And Mr. Flores, I suppose we'll start with
6 you. Go ahead.

7 MR. FLORES: Yes, sir. Robin Flores for
8 Plaintiff. And shall I list all of them, Your Honor?

9 THE COURT: Well, you don't need to tell me
10 everyone you represent. Just, do you have any -- or
11 are any of the Plaintiffs participating in this call
12 with you?

13 MR. FLORES: No, Your Honor, I'm here on my
14 office phone.

15 THE COURT: Okay. So, Mr. Flores. Who else
16 is here about half of a Plaintiff?

17 MR. KLAVER: I'm representing myself, Your
18 Honor, William Klaver, case 119-CV-198.

19 THE COURT: Okay. Mr. Klaver, thank you,
20 sir.

21 And is John Cavett on the line with us today?

22 UNIDENTIFIED MALE SPEAKER: I do not hear
23 him, Judge. I'm going to call his office and see --
24 maybe he thought it was a different time. I'm only
25 taking a guess here.

1 THE COURT: Yeah. I would expect Mr. Cavett
2 to be on the line with us.

3 UNIDENTIFIED MALE SPEAKER: Yes, Your Honor.
4 Let me see what I can do to get him.

5 THE COURT: Okay. Who is -- are there any
6 individual Plaintiffs who are on the line today? Or
7 relatives of Plaintiffs?

8 MR. KLAVER: Just myself, Your Honor, William
9 Klaver.

10 THE COURT: Yes, I got you Mr. Klaver. But I
11 was wondering if there was any others who haven't
12 identified themselves. Okay.

13 MR. KLAVER: Okay. Thank you.

14 THE COURT: And -- and who is here on -- who
15 is here on behalf of the -- just a second.

16 MR. FLORES: This is Robin Flores for
17 everyone. I'm going to go to mute on my cell phone
18 while I try on my office phone to get a hold of
19 Mr. Cavett.

20 THE COURT: Okay. Let us know when you're
21 back, Mr. Flores.

22 Who's here behalf of Hamilton County?

23 MR. HOBBS: Dee Hobbs.

24 MS. MILLING: And Sharon Milling also.

25 THE COURT: All right. Thank you, Counsel.

1 All right. And then we have other
2 Defendants. Go ahead and identify yourselves.

3 MR. TIDWELL: Your Honor, this is Jerry
4 Tidwell. I'm here for Bobby Brewer, Deputy Bobby
5 Brewer, Deputy Jacob Goforth, and Deputy Colin McRae.
6 And my representation covers several of the individual
7 suits. (Inaudible) I believe (inaudible) in another
8 suit, but I don't represent him.

9 THE COURT: Okay.

10 MR. EXUM: Your Honor, this is Jim Exum on
11 behalf of Deputy Daniel Wilkey, and I represent him in
12 the Shandle Riley, Janice Mitchell, and Kelsey Wilson
13 matters.

14 THE COURT: All right. Thank you.

15 MR. GUSTER: This is attorney Micah Guster
16 for Daniel Wilkey in Klaver's case and the
17 (inaudible,) Your Honor.

18 THE COURT: Okay. Thank you. Micah
19 Custer -- Guster.

20 I was telling my court deputy, Mr. Guster, he
21 -- she didn't hear your name, so that's why I repeated
22 it.

23 Are there any other attorneys on the line?

24 MR. FLORES: Your Honor, this is Robin
25 Flores. I just got a hold of Mr. Cavett. They're

1 working, like we are, long distance. He is attempting
2 to call as we speak, so hopefully we'll hear from him
3 in the next couple minutes.

4 THE COURT: All right. He's -- he's got
5 the -- you gave me a call-in number?

6 MR. FLORES: Yes -- yes, Your Honor. I gave
7 him the call-in number and my code. I assume it's the
8 same for everybody.

9 THE COURT: It should be.

10 All right. Everybody sit tight for a second,
11 and let's let Mr. Cavett call in.

12 MR. FLORES: Judge, I'm get someone at my
13 door. I'm going to put this on mute, and I'll be
14 right back.

15 THE COURT: All right. Thank you. All
16 right.

17 MR. CAVETT: Hello, everybody. I'm in
18 trouble, ain't I?

19 THE COURT: No, that's all right. Is -- is
20 this Mr. Cavett?

21 MR. CAVETT: Yes, sir.

22 THE COURT: All right. Mr. Cavett, this is
23 Judge Steger. We have on the line reporters -- two
24 reporters. Then we have as counsel Robin Flores. We
25 also have Mr. Klaver representing himself, Dee

1 Hobbs -- Dee Hobbs and Sharon Milling on behalf of the
2 County, Jerry Tidwell --

3 MR. CAVETT: All right.

4 THE COURT: I tell you, Mr. Cavett, just
5 because we're on the phone, why don't you not -- you
6 don't have to agree with me, because we'll end up
7 talking over each other.

8 So Jerry Tidwell is representing some of the
9 individual sheriff's deputies. Jim Exum is
10 representing Officer Wilkey in some of the cases, and
11 Micah Guster is representing Officer Wilkey, also, in
12 another case or cases.

13 So that -- those are all of the people
14 identified as being on the call at this point. And we
15 haven't gotten into any of the substance of the
16 hearing. What I did say to everybody, Mr. Cavett, is
17 that because we have so many people on the call, I'm
18 going to ask that each person identified themselves
19 before they speak, even if they -- and every time you
20 speak, you need to identify yourself so that we know
21 who is speaking.

22 So let me just ask, Mr. Flores, are you back
23 on the line?

24 MR. FLORES: Yes, Your Honor.

25 THE COURT: All right. Counsel --

1 MR. FLORES: Yes, Your Honor, I'm back on the
2 line.

3 THE COURT: All right. I'm ready to proceed.
4 Is there -- are there any preliminary matters that any
5 of you feel like must urgently be taken up before we
6 get into a discussion of the motions?

7 All right. I hear nothing, so I am going to
8 do some stage setting to perhaps eliminate some of the
9 discussion that might otherwise need to take place.

10 There are two motions pending before the
11 Court. That's why we're having this hearing today.
12 There is a motion filed on behalf of Shandle Riley by
13 Mr. Flores. It's a motion for an order requiring
14 Hamilton County to preserve electronic evidence and
15 data and for an order allowing the Plaintiff to
16 conduct a forensic examination of all computers and
17 data preserving devices involved with the transmission
18 and preservation of in-car video created by Hamilton
19 County deputies.

20 I'll summarize that a little bit because it's
21 a long caption, but that's the relief requested in the
22 motion. There is an identical -- virtually identical
23 motion filed on the same date, February 28, by
24 Mr. Cavett, and that is on behalf of Maxwell Jarnigan.
25 And that was joined in -- that motion was also filed

1 by Mr. Biggs, Mr. Cavett's co-counsel.

2 I have, of course, read these motions and
3 accompanying memoranda of law. I have looked at the
4 docket yesterday. I do not see that Hamilton County
5 has filed a written response to either of these
6 motions.

7 Mr. Hobbs, would you confirm that Hamilton
8 County has not filed a written response to these
9 motions?

10 MR. HOBBS: We have not.

11 THE COURT: All right. So the -- the
12 reason -- the reason for these motions is that at some
13 point Plaintiff's counsel learned that a server
14 operated by the Hamilton County Sheriff's Department
15 containing in-car video footage from the Sheriff's
16 Department had experienced a software failure and that
17 resulted in the loss of in-car video footage from
18 October 25, 2018 to January 23, 2020.

19 And apparently included all video footage on
20 that server during that time period. Apparently a new
21 server was built, and so video footage -- in-car video
22 footage from January 23, 2020 to present is being
23 stored again.

24 Hamilton County has done some internal
25 investigation to determine what caused the server to

1 fail and the video footage to be lost. And I'll just
2 leave it at that for the moment. For right now it
3 appears that much of the video footage is indeed a
4 lost.

5 So against that backdrop, we have nine
6 different lawsuits which were filed, and I believe
7 that Mr. Klaver's was first. His was filed on July 9,
8 2019. And then there are eight other lawsuits filed.
9 Mr. Flores I believe represents the Plaintiffs in
10 seven of those lawsuits, and Mr. Cavett represents a
11 Plaintiff in one of those lawsuits and has filed it as
12 a class action or punitive class action.

13 These lawsuits as I indicated, Mr. Klaver's
14 was the first lawsuit filed, and it was filed on July
15 9, 2019. The other lawsuits were filed over a period
16 of time with the last lawsuit being filed on December
17 17, 2019.

18 So with the last lawsuit being filed on
19 December 17, 2019, a question arises in my mind that I
20 don't have an answer to, so I'm going to -- I'm not
21 going to invite a discussion yet or argument, but I am
22 going to ask question to Mr. Hobbs.

23 It -- it would appear to me that since the --
24 all the video footage in the server was lost
25 through -- from October 2018 through January 23, 2020

1 that the server failure occurred on January 23, 2020.
2 But I don't have anything before me that confirms
3 that, so I'm going to ask Mr. Hobbs now or
4 Ms. Milling, is that the date that the server failed
5 and the footage was lost?

6 MR. HOBBS: That is our information.

7 THE COURT: Okay. So generally speaking, a
8 party's duty to preserve evidence arises when a party
9 has a reasonable anticipation of litigation. And it
10 arises in any event no later than when the person is
11 sued, that is when there is notice of the commencement
12 of litigation.

13 So the duty to preserve evidence arises at
14 that time. So between July of 2019 and December of
15 2019, there were nine lawsuits filed, all of which
16 named Deputy Daniel Wilkey -- I believe, all or most
17 of which involved traffic stops which the Plaintiffs
18 allege were conducted illegally in violation of their
19 civil rights with various different kinds of facts and
20 nuances.

21 But when the County learned of these series
22 of lawsuits, it created an affirmative obligation --
23 affirmative obligation on the County to preserve
24 evidence. And given the fact that these patrol cars
25 that -- or patrol car that were the subject of various

1 allegations in the complaints were equipped with
2 video dash cams, it -- it seems logical that the
3 County was under a duty to preserve evidence of the
4 video dash cams as a result of these lawsuits.

5 And there are two things that that obligation
6 involves. Generally, the first thing that needs to
7 happen is a written litigation hold needs to be
8 issued. And that hold is supposed to go to -- the
9 written litigation hold is supposed to go to
10 individual custodians believed to possess relative
11 material. And it's supposed to advise them to
12 preserve the relevant material. It's supposed to give
13 them specific instruction about that.

14 And so to the extent that -- to the extent
15 that there were emails or written communications or
16 reports filled out relating to these traffic stops and
17 other incidents in which Daniel Wilkey and other named
18 Defendant deputy -- deputies were named, all -- all of
19 those custodians should have been placed on notice
20 that they needed to retain their documents and videos.

21 And to the extent that those deputies,
22 officers were to turn in reports in certain
23 repositories, whether electronically or paper copies,
24 the custodians of those records should have been
25 notified that there -- that they were subject to

1 litigation hold, that those records needed to be
2 preserved.

3 And whomever had custody of the dash-cam
4 videos and certainly if there were any body-cam videos
5 or any other recordings of these events which are
6 involved in the lawsuit, various lawsuits, those
7 persons should have been provided written notification
8 that they needed to preserve the evidence they had in
9 their custody.

10 So that's the first step that is supposed to
11 be adhered to when litigation is anticipated and
12 certainly after it is filed.

13 The next thing that is supposed to be done
14 with respect to electronically stored information,
15 which is commonly referred to as ESI, is collection.
16 Such that to avoid losing emails, videotapes,
17 recordings, any other documents or data that is
18 preserved electronically, collection is supposed to
19 be -- is supposed to take place such that if you have
20 a recording that is over written in a loop, you want
21 to preempt it being overwritten. So you want to go
22 capture that before the overriding takes place. Or if
23 you have data on a hard drive that could be
24 susceptible to being deleted, you would go make a copy
25 of the hard drive to make sure that you're storing it

1 someplace secure.

2 And if you have a server that contains a
3 bunch of data, normally what you would do is you would
4 go to that server, you would identify the video
5 evidence that -- that could be susceptible to being
6 lost for whatever reason and you would copy it onto a
7 hard drive, onto another server, onto something that
8 would preserve it for litigation purposes.

9 And that's a duty that all attorneys have in
10 all litigation, to impose a litigation hold and then
11 to take reasonable efforts to assure that evidence is
12 not lost.

13 So the first question I've got, and this
14 relates to rule -- Federal Rule of Civil Procedure
15 37(e), which specifically addresses the failure to
16 preserve electronically stored information.

17 The preamble to that rule provides if
18 electronically stored information that should have
19 been preserved in the anticipation or conduct of
20 litigation is lost because a party failed to take
21 reasonable steps to preserve it, and it cannot be
22 restored or replaced through additional discovery,
23 then it sets forth a list of things the Court can do.

24 But the first question that needs to be
25 asked -- the first question that needs to be asked is,

1 is it truly lost. So far the County is telling us
2 that the video footage is lost. But we need to -- the
3 Court is not going to be satisfied with a simple
4 representation that it is, and that's something we're
5 going to discuss. We really need to find out if it's
6 truly lost, or whether there's any possible way it
7 could be recovered.

8 The second thing we need to determine is
9 whether it was lost because a party failed to take
10 reasonable steps to preserve it.

11 And then the third thing that we need to look
12 at is, is there any way for us to restore or replace
13 through additional discovery the evidence that was
14 lost.

15 So I know -- the first part of this rule,
16 this electronically stored information these -- this
17 video footage of Mr. Wilkey and other deputies making
18 traffic stops interacting with the Plaintiffs in these
19 cases, there is no question that that should have been
20 preserved. That's -- it would be hard to argue
21 there's anymore evidence that could possibly be more
22 relevant to these cases.

23 The second part of this analysis, was this
24 evidence lost because a party failed to take
25 reasonable steps to preserve it. Well, in answer to

1 that, the Court has no idea. And the reason the Court
2 has no idea is because the County has not given the
3 Court any information in response to these motions.

4 I don't know sitting here today whether any
5 written litigation holds were put in place when these
6 series of lawsuits were filed. None have been
7 produced. I don't know whether any measures were
8 taken by the Hamilton County Sheriff's Department to
9 preserve evidence that was to identify and preserve
10 evidence that was relevant to the claims of these nine
11 different lawsuits.

12 And I guess that's our starting point. So
13 Mr. Hobbs and Ms. Milling, I need an explanation as to
14 what steps were taken to preserve this evidence by way
15 of litigation holds, and then there's a practical
16 matter, what steps were actually then implemented to
17 preserve the evidence that's relevant to these claims.

18 MR. HOBBS: Your Honor, we told you at the
19 previous hearing that we believed we had preserved,
20 prior to the loss, the general data loss, copies of
21 information. We have at least 180 hours of video
22 preserved. The problem is that the originating source
23 has disappeared, not -- and we said this, Your Honor,
24 at a previous hearing.

25 So there was certainly efforts made to

1 preserve this information. That's number one. Number
2 two, what we did is what we would do in any case where
3 there's a request for preservation or a lawsuit filed.
4 We will contact, as we did in this circumstance, the
5 sheriff's office, relate these events, the date, and
6 as much information as we can so that a litigation
7 hold can be created.

8 And, in fact, in this case I cannot represent
9 because I do not know if all -- literally, all
10 information regarding these cases was preserved.
11 However, I can assure you it is a matter of public
12 record that information -- video relative to Daniel
13 Wilkey was, in fact, preserved. It was in the public
14 domain.

15 So the short answer to your question, yes,
16 copies of information was made. Two, efforts were
17 made to preserve the information. Three, that is not
18 really the problem here. The problem here is that
19 requests are being made for events other than these
20 cases in order to try to develop some claim of a
21 custom or practice of unconstitutional conduct.

22 And when it comes to that, for instance,
23 Officer Sharon Milling's beating of someone on January
24 1st of 2020, any car video or any dash-cam or any
25 body-cam information would not be preserved at present

1 because the system failed.

2 I hope the Court understands what I'm saying.

3 THE COURT: Well, let's backup to what you
4 are saying. You indicated just now that there are --
5 there exists 180 hours of video footage. You still
6 have that?

7 MS. MILLING: At least, Your Honor.

8 THE COURT: And does that -- does that video
9 footage capture all of the traffic stops that
10 Mr. Wilkey made that are the subject of these
11 lawsuits?

12 MS. MILLING: Do not know that yet.

13 MR. HOBBS: But, Your Honor, we are informed
14 that is what it is and that we were able to do that
15 prior to the system, this underlying system fail.

16 THE COURT: And how did -- how did you go
17 about doing that, Mr. Hobbs, or how did the County do
18 that? How did they extricate -- who did it, and what
19 sort of search parameters did they run to get
20 information relevant to these, I'm going to call them
21 the nine Daniel Wilkey lawsuits?

22 MS. MILLING: Your Honor, this is Sharon
23 Milling. My understanding, and this comes from the IT
24 department of the sheriff's office, is that they were
25 requested by the district attorneys office to be able

1 to view a certain portion back. I want to say it was
2 a year back, but I'm not sure about that. At the time
3 that all this first started coming up in the press and
4 the DA's office wanted to look back that far, and they
5 made that accessible to the DA, and it was preserved.
6 All of that was preserved is my understanding.

7 THE COURT: Have you had discussions with
8 Plaintiff's counsel in these cases to let them know
9 that that video footage is available for them to
10 review?

11 MS. MILLING: I can't -- I can't remember if
12 I have or not, Your Honor. I don't believe I have
13 with Mr. Cavett. I'm not certain about Mr. Flores.
14 We talked a lot.

15 MR. FLORES: Your Honor, this is Robin
16 Flores. In response to my friend and colleague,
17 Ms. Milling, we did have a very specific discussion
18 about a case that is now been removed, which this
19 particular issue is going to rise in the (inaudible)
20 bond matter.

21 Otherwise I do have -- I have attached to
22 document 50 in my brief the efforts that I've made in
23 preserving the evidence at least in the Riley matter.
24 That's the extent that I have diaries as being
25 discussions about this video loss at this point.

1 THE COURT: All right. So, Mr. Hobbs and
2 Ms. Milling, it's your understanding that after these
3 lawsuits arose sequentially, you had notified --
4 Mr. Hobbs, you had notified the County that they
5 needed to preserve evidence; is that correct?

6 MR. HOBBS: Yes, Your Honor.

7 THE COURT: And how do you do that,
8 Mr. Hobbs? Did you just call them and tell them, or
9 do you issue a written litigation hold?

10 MR. HOBBS: We call them and tell them, Your
11 Honor.

12 THE COURT: And do they generate any written
13 litigation hold as a result of the conversation with
14 you?

15 MR. HOBBS: No, Your Honor. They endeavor to
16 send us the records that we ask for or that we ask to
17 be preserved.

18 THE COURT: And those are --

19 MR. HOBBS: And, Your Honor, if I may, I
20 cannot represent that all possible information, video
21 information relative to do these cases was preserved.
22 However, I can tell you that substantial information
23 regarding this litigation -- each of these cases, has
24 been preserved.

25 And, again -- again, sequentially, how -- whether

1 this is before the DA requested the information or
2 afterwards, I do not recall, but we had occasion as
3 did the DA, to request a substantial amount of video.

4 We do not know -- we do not know that any video
5 regarding these cases -- these cases, the particular
6 transactions, are lost whatsoever. That isn't the
7 problem, and that's what were trying to say. The
8 problem is we have an overall data loss.

9 THE COURT: So is it fair to say, Mr. Hobbs,
10 that nobody has gone back to -- to your knowledge, to
11 review the video footage that you do have, you said
12 you had 180 hours, nobody has gone back to look at
13 that to determine whether it does reflect the
14 incidents which are the subject of these nine
15 different lawsuits against Mr. Wilkey and others?

16 MR. HOBBS: Not -- not as of yet. And you
17 would recall the Court directed us not -- I call it
18 the mother system or mothership -- we were
19 specifically directed not to make any -- put any hands
20 on the mothership in any regard, and we have not.

21 THE COURT: Well, the mothership is --

22 MR. HOBBS: (Inaudible due to cross talking.)

23 THE COURT: -- you're referring to the --
24 hang on.

25 The -- the colloquial term, the "mothership"

1 that you're referring to refers to the server that
2 failed. And what I was talking to you about was I
3 didn't want anybody making any changes to that server,
4 because part of what we need to talk about is having
5 an independent forensic examiner come in and determine
6 whether it failed for the reason that the County said
7 that it failed, or whether failed for some other
8 reason.

9 But I wasn't -- where -- where are these --
10 presumably the 180 hours of footage that you say were
11 preserved, were not preserved on a broken server.
12 Where are those being kept?

13 MS. MILLING: They are preserved on a
14 terabyte thumb drive.

15 THE COURT: Say that again, Ms. Milling.
16 Somebody was -- try to avoid the background noise.

17 Go ahead.

18 MR. HOBBS: A terabyte external hard drive,
19 Your Honor.

20 THE COURT: Where's that hard drive being
21 kept?

22 MS. MILLING: Right now it's at the sheriff's
23 office.

24 THE COURT: All right. So there's -- there's
25 one copy of it on a disk?

1 MS. MILLING: It's on a hard drive, and I
2 believe the hard drive has been provided to
3 Mr. Wilkey's attorney, Mr. McGowan.

4 THE COURT: All right. But --

5 MR. CAVETT: Your Honor, this is John Cavett.
6 Can I ask a question for clarification purposes. When
7 using the language all evidence relevant to these
8 cases and we're talking about 180 hours of recordings,
9 my question is, do -- does the DA's office have or the
10 terabyte drive have all of Wilkey's video-cam arrests
11 for the year preceding, say, December 2019, or are we
12 just talking about the named Plaintiffs? Because I
13 can say that the evidence in my case is far more than
14 that, which relates just to the just to the named
15 Plaintiffs.

16 And I don't know whether 180 hours is
17 everything the man -- every arrest the man made or
18 not, that's (inaudible) the Court to make.

19 THE COURT: Mr. Cavett, what I understood
20 Mr. Hobbs and Ms. Milling to say is that they don't
21 know.

22 MR. CAVETT: Okay. I'm happy with that. I
23 understand that.

24 UNIDENTIFIED MALE SPEAKER: And, Your
25 Honor -- Your Honor, I'll go so far as to say that

1 when we receive a litigation hold, or when a lawsuit
2 is filed, we do not ask the sheriff's office to
3 preserve all information that metaphysically might
4 result in (inaudible) for a person making a custom
5 practices and procedure claim.

6 I will -- I will -- I will tell you that if
7 someone wants to allege and they want to prove their
8 case against a municipal defendant such as Hamilton
9 County by asking for a thousand other arrests to show
10 them we don't properly train, no. We've never made
11 such a preservation request.

12 THE COURT: Yeah, well -- yeah, I understand
13 that.

14 UNIDENTIFIED MALE SPEAKER: I believe we
15 have -- I believe we have ,on hand, available, video
16 information relevant to these cases. That is what we
17 typically would ask for, and that is what we typically
18 would receive. It would not be unusual as discovery
19 proceeds in a case to realize that we might have a
20 need to go back and obtain other information regarding
21 other events. That is what we apparently cannot do
22 right now.

23 MR. FLORES: Your Honor, this is Robin
24 Flores, and a couple things I'm going to say I don't
25 want it to seem like I'm, you know, taking any attacks

1 against the County attorneys here. I consider them my
2 friends and colleagues.

3 But there's something real pointed that I've
4 got -- a point I've got to make here is -- and the
5 document 50 that I filed I attached some exhibits.
6 And early on in the Riley matter I sent a spoliation
7 request out by certified mail which is pretty specific
8 as to what I'm looking for. And then a request for
9 production, which the County is yet to answer. And
10 that was back in October 2nd. And that -- that's
11 document 54, and it -- it focuses on specific video
12 footage.

13 My concern is that I don't know if this has
14 been preserved or not. Ms. Milling did send me a
15 response email to my spoliation demand, but, you know,
16 here we are now in March or April, and I still don't
17 have anything responsive to the request for
18 production, and now I'm hearing that maybe the
19 district attorney may be the sole source or the County
20 has got these things somewhere and has yet to respond.

21 So I want to make sure that point -- you
22 know, that that point is out there in regard to at
23 least my end, I requested to preserve this evidence,
24 and we don't lose sight of that.

25 MR. HOBBS: I -- Ms. Milling needs to respond

1 to that, Your Honor.

2 MS. MILLING: Your Honor, I don't think we
3 said that the DA was the sole source.

4 THE COURT: You didn't. You said the County
5 has the hard drive.

6 MS. MILLING: And also, Your Honor, there's
7 been an issue with the District Attorney's Office as
8 far as what we have been able to release and what we
9 have not been able to release. There's been some
10 discrepancy about the different case law that we
11 filed.

12 In fact, there was one -- I can't remember
13 which one it was, it may have even been Riley, but we
14 were intending to release, and then the DA's office
15 called, and -- and we were told not to release.

16 MR. HOBBS: That is correct, Your Honor. I
17 will confirm that. I got that (inaudible) from
18 Mr. Pinkston (phonetic) --

19 UNIDENTIFIED MALE SPEAKER: And would -- I'm
20 sorry I didn't mean to speak over you.

21 MR. HOBBS: I got the call from Mr. Pinkston,
22 and I'll be honest, the only thing I remember it was
23 about was Wilkey. I do not -- I do not right offhand
24 recall which of these nine or ten plaintiffs against
25 Mr. Wilkey it pertained to.

1 I frankly protested due to the fact that
2 other video had obviously been released by the
3 district attorney, because it's been on television.
4 You know, I don't get it. But I'm sorry, and it does
5 I -- I -- I respect that Mr. (inaudible) is entitled
6 to the information. I didn't question it. But -- but
7 I don't know the DA's the only source of information.

8 THE COURT: Well, we're speaking in the
9 abstract now. I don't know what information the
10 district attorney could have that was not furnished to
11 it by Hamilton County, the Hamilton County Sheriff's
12 Department.

13 UNIDENTIFIED MALE SPEAKER: That -- that
14 video.

15 THE COURT: Well --

16 UNIDENTIFIED MALE SPEAKER: Your Honor --

17 THE COURT: I'm not -- no requests are being
18 made at this point to my knowledge from the -- from
19 the District Attorney's Office. The requests are
20 going to be made from Hamilton County Sheriff's
21 Department. And -- and I assume that if Hamilton
22 County Sheriff's Department produced some information
23 to the district attorney, it didn't disgorge all of
24 its originals and fail to keep copies. Do you think
25 that's what happened? Do you think that --

1 UNIDENTIFIED MALE SPEAKER: Yes, Your Honor.

2 Yes, Your Honor, exactly.

3 THE COURT: You -- you think that -- the
4 Hamilton County Sheriff's Department did not keep
5 copies of the documents and videos that he gave to the
6 District Attorney's Office?

7 UNIDENTIFIED MALE SPEAKER: We -- we kept
8 them, Your Honor.

9 THE COURT: Who -- I'm sorry say it again.

10 UNIDENTIFIED MALE SPEAKER: We kept them.
11 The sheriff's office.

12 THE COURT: Okay. The sheriff's department
13 has them? And -- are you telling me that the district
14 attorney is telling you or telling the County that it
15 cannot produce materials relating to the Wilkey case
16 to the Plaintiff's counsel in the Wilkey case?

17 UNIDENTIFIED MALE SPEAKER: Pending the
18 charges against Mr. Wilkey, we were told then not to
19 give that information -- we were told not to review
20 that information, obtain that information, disseminate
21 that information.

22 THE COURT: All right. Well, we'll work
23 through -- we'll work through that. That's a -- if
24 you get in a conflict between what your obligations
25 are here in federal court in compliance with discovery

1 and what the DA's telling you to do, we'll just have
2 to work that out. That's not really the purpose of
3 this hearing today.

4 UNIDENTIFIED MALE SPEAKER: And, Your Honor,
5 let me state, I don't think that is a problem at this
6 point because now the grand jury's been trying to
7 indict, so I think we're beyond that.

8 THE COURT: Yeah, I think so.

9 UNIDENTIFIED MALE SPEAKER: That -- that was
10 a problem some time ago.

11 THE COURT: All right. All right, counsel,
12 what we need to do is we need to determine what
13 evidence that is relevant to this case, to these nine
14 lawsuits, has been lost. If all of the evidence that
15 is relevant to the lawsuits that are pending before
16 this court still exist and is still in the custody and
17 control of the Hamilton County government, then we
18 don't have a problem.

19 But if some of this evidence, which should
20 have been preserved, has been lost, then we need to
21 work through that. That is a problem. What I'm
22 realizing from this hearing today is that nobody on
23 the call can tell me whether evidence related to the
24 Daniel Wilkey lawsuits has, in fact, been lost.

25 UNIDENTIFIED MALE SPEAKER: (Inaudible due to

1 cross talking.)

2 MR. FLORES: Your Honor, it's Robin Flores.

3 We are almost -- Your Honor, this very issue seems
4 almost circular to me because in -- (inaudible due to
5 cross talking) Judge I got a little benefit and that I
6 have participated with my clients in, you know, the
7 criminal investigation. So I'm aware and I had a
8 request from the district attorney not to disclose the
9 contents of those interviews, but I am aware that
10 there is over 500 hours of video recordings that the
11 district attorney had difficulty getting from the
12 sheriff. And, in fact, had to use -- say, you got
13 problems with your recording, you know, being able to
14 pull these recordings up, we'll get TBI to come out
15 there and look at the equipment and get it.

16 And then shortly after that, the County
17 produced 500-something hours of videos. But the
18 problem I've got on my end as Plaintiffs counsel in
19 the civil case --

20 THE COURT: Wait -- wait a minute,
21 Mr. Flores. Did you -- you said audio recordings at
22 one point, and then you said videos. Are you --

23 MR. FLORES: Well, video. Video. My
24 apology. I -- I'm interchanging the terms the same,
25 the same subject matter.

1 THE COURT: Okay. This is -- this is new
2 information. Are you telling me that the district
3 attorney was able to obtain 500 hours of video footage
4 relating to traffic stops by sheriff's deputies?

5 MR. FLORES: Yes -- yes, Your Honor.

6 THE COURT: 500 hours?

7 MR. FLORES: Approximately -- the number --
8 it was it was a little more than that.

9 THE COURT: Did you -- did you talk to the
10 sheriff's department -- excuse me -- to the DA about
11 whether that encompassed all of the Daniel Wilkey
12 traffic stops?

13 MR. FLORES: That, as I understand it from
14 Tom Landis (phonetic), who is the assistant district
15 attorney that's taken the lead on -- on --
16 prosecution, is that it is -- it does encompass
17 traffic stops.

18 The content of it -- of -- are also the
19 transportations of particular individuals, which I
20 believe was the basis for the reckless endangerment
21 and reckless driving charge.

22 The problem I've got as Plaintiff's counsel,
23 is access and usability of that being able to use
24 that. For example, when -- I think the request for --
25 that Mr. Hobbs was talking about where the DA got an

1 opinion from the state attorney general in whether
2 they disclose or disseminate information or video, I
3 think that was a request from the media if memory
4 serves me and not so much from me.

5 The problem I have with getting this evidence
6 is if the district attorney seems to be the sole
7 source of getting this video, we're going to have a
8 devil of a time forcing the DA, who is not a party, to
9 disclose that to us.

10 So even if the DA's got all this, it's not
11 the DA's duty to preserve and present that evidence,
12 it's the County. And early on in this case, I've done
13 what I needed to do to try to get the County to
14 preserve that and then we find out from this letter in
15 the Janice Hines (phonetic) matter that there's a
16 problem with it.

17 So I think there's more than 180 hours that
18 needs have been preserved and protected, and I'm
19 hearing that that's all that's been preserved so far.
20 I think there's more, and that would give more to John
21 Cavett's class-action. So I'll leave it at that.

22 THE COURT: Well, let me ask -- let me ask
23 Mr. Hobbs and Ms. Millings. Mr. Flores has indicated
24 that the DA -- the DA's office has told him that they
25 have over 500 hours of video footage from the

1 sheriff's department. And what I'm hearing from the
2 two of you is that you believe that there are only 180
3 hours of video footage preserved.

4 MR. HOBBS: Your Honor, the term -- the term
5 was "at least." We don't know. Not -- I don't know
6 how many hours. I don't know.

7 MR. CAVETT: Your Honor, John Cavett. I also
8 wonder whether the disparity in numbers -- you know,
9 at one point we're talking about dash-cam footage.
10 But these officers have cameras on their bodies.
11 There's -- there's cameras in the cars that are
12 sometimes pointed back in the backseat and so forth so
13 there may be a despair -- a disparity in that sense as
14 well.

15 THE COURT: Yeah, let -- let's talk about
16 that. The letter that I'm looking at the Mr. Flores
17 has attached to his motion just talks about the failed
18 server having lost in-car video. It -- it refers only
19 to a data loss of in-car video footage.

20 Let -- let me ask this question first.
21 Ms. Milling, Mr. Hobbs, is in-car video footage --
22 does that -- is -- should that be interpreted broadly
23 enough to also mean dash-cam video?

24 MS. MILLING: Your Honor, yes, Your Honor.
25 In-car camera footage for County purposes, he has

1 dash-cam videos.

2 MR. HOBBS: Not body-cams.

3 MS. MILLING: Not body cameras. Again, the
4 County does not have -- Sheriff's Office does not have
5 cameras in the car on the rear seat like the city
6 does, if that's what you're referring to.

7 THE COURT: Does it have any -- it doesn't
8 have video facing -- looking at the backseat of the
9 car, does it -- does it video the officer who's
10 driving the car?

11 MS. MILLING: It does not.

12 THE COURT: Okay.

13 MS. MILLING: It is a dash-cam. It is
14 looking out the front window.

15 THE COURT: All right. So the -- the video
16 footage that was lost refers only to dash-cam videos;
17 is that correct?

18 MS. MILLING: That -- well, not -- Your
19 Honor, I think the system they were talking about also
20 encompasses body camera video for those officers who
21 have body camera video. My understanding is that none
22 of the officers involved in these lawsuits had body
23 cameras. They -- they had not been issued then
24 because it has been -- they've been in beta testing.

25 THE COURT: All right.

1 MR. EXUM: Your Honor, this is Jim Exum. May
2 I interject for just a moment?

3 THE COURT: Sure.

4 MR. EXUM: There's been a lot of talk this
5 morning about 180 hours of video, which is 500. I
6 want an absolute candor with the Court and the
7 counsel. I have recently come into possession of a
8 terabyte drive that has a great number of videos on
9 it.

10 Now, I cannot estimate to the Court how many
11 hours are on there. I have not had a chance to get
12 through it. I only had about a week, and I don't know
13 what's on there and what's not on there. So -- and
14 this came from the DA's office as part of the
15 discovery in the criminal matter involving Deputy
16 Wilkey.

17 So I do have that drive, and, you know, if
18 somebody asked me for it, I'd have to produce it as
19 part of discovery in this case anyway, but I just want
20 the Court to know that, that the DA is probably not
21 the only source for that information.

22 At this point I cannot estimate what's on
23 there, what's not on there. I assume all this came
24 from the County at some point, but I just -- I
25 don't -- there's a lot of files on there that I

1 don't -- I haven't looked at, and I don't know
2 anything about them.

3 THE COURT: Mr. -- and Mr --

4 MR. FLORES: Your Honor, may I -- it's Robin
5 Flores. May I ask Mr. Exum a question --

6 THE COURT: Well, let me ask him a question.
7 Hang on, Mr. Flores.

8 Mr. Exum, is it your understanding that you
9 have a copy of a hard drive that the DA maintained its
10 own either the original or it's own copy?

11 MR. EXUM: Your Honor, I have a drive of
12 videos that was produced as part of the discovery in
13 Mr. Wilkey's criminal matter, which were given to
14 Mr. McGowan.

15 THE COURT: Okay. Again, though, you don't
16 think that you're in possession of the only version of
17 those videos at this point; is that correct?

18 MR. EXUM: That's correct, I'm not.

19 THE COURT: All right.

20 MR. TIDWELL: Your Honor, if I could
21 interject. This is Jerry Tidwell. I had a face-to-
22 face conversation with Neil Pinkston in late December
23 where he told me he possessed hundreds of hours of
24 videos. He didn't tell me how many, but he said his
25 staff looked at every single dash-cam video of Daniel

1 Wilkey for approximately a year.

2 When we had the last hearing in court, I sent
3 him an email advising him that if he still had that
4 stuff, he really needs to preserve it, which I didn't
5 think was necessary, I'm sure they're preserving it.
6 But he didn't respond to that email, but -- but he --
7 I'm sure has that video, whatever it consists of.

8 MR. FLORES: Your Honor, it's Robin Flores.
9 That's the -- pretty much the same information I got
10 from Mr. Pinkston and Mr. Landis that Mr. Tidwell just
11 imparted to the Court. And for about a year's
12 worth -- the number 500-plus is specific to
13 Mr. Landis's representation to me that he looked at
14 and that the County -- the district attorney did split
15 up -- out, you know, chunks of it between the various
16 ADAs to review, because there is just so much.

17 So that -- that -- if Mr. Exum -- Your Honor,
18 if I could get -- ask Mr. Exum a particular question
19 because there's another issue that's coming up about
20 footage that was created not on a dash-cam, and I
21 believe may exist.

22 THE COURT: How is that footage supposedly
23 prepared?

24 MR. FLORES: It was on a person's cell phone.
25 And that would have been by Mr. Goforth in the Shandle

1 Riley matter.

2 MR. TIDWELL: Your Honor, this is Jerry
3 Tidwell. I represent Goforth. He did, in fact, make
4 a cell phone video of the actual baptism. He was
5 asked to turn it over to the DA's office, which he
6 did.

7 He no longer has a copy of it. I know a copy
8 exists, and the DA described that video to me. And,
9 actually, I've seen it. I know it exists. It's very
10 short. It's less than two minutes.

11 THE COURT: Was that turned over to the DA's
12 office before the lawsuit was filed against
13 Mr. Goforth?

14 MR. TIDWELL: That's my understanding. When
15 they were criminally investigating this case, he was
16 ordered by -- he was interviewed by his superiors. He
17 identified, I think, that he had a video. He then was
18 instructed to turn it over to the DA's office.

19 And I don't know -- I -- and I'm trying to
20 recall this. If I understand correctly, the DA's
21 office to get off the phone themselves, and -- and
22 made a copy. But I don't think it survived -- it does
23 not survive on his phone, okay?

24 But -- but General Pinkston -- my purpose of
25 my conversation with him was to find out if they could

1 tell me what they have, so I would know where to ask
2 for it eventually whenever they could reveal some of
3 their investigation. And it -- it exists, because I
4 actually got to see it.

5 THE COURT: Okay. Well, Counsel, this is --
6 this is productive. I started out by -- I started out
7 where we should in this case, which is rule 37(e) of
8 the Federal Rules of Civil Procedure.

9 And -- and we -- we have determined that
10 certain information that should have been preserved
11 has been lost. It was lost because of the failure of
12 a server. And we'll talk a little bit more about that
13 in a second, but under the rule what we need to do is
14 determine whether the data that was lost can be
15 restored or replaced through additional discovery.

16 And I'm hearing different bits of information
17 as to how we might do that. But it sounds like much
18 of the information that was on the server that failed
19 had already been transferred to the district
20 attorney's office prior to the failure of the server.

21 No -- no one on this call has been able to
22 tell me whether all of the relevant footage from the
23 various allegations against Mr. Wilkey and his
24 codefendants is represented among the footage that is
25 still available to some combination of Neil

1 Pinkerton's office and Hamilton County -- and Hamilton
2 County's Sheriff's Office.

3 And then, of course, Mr. Tidwell, a video
4 taken by Mr. Goforth of the baptism of Ms. Riley would
5 obviously be extremely relevant to her claims against
6 Mr. Goforth and Mr. Wilkey.

7 And so that's something that absolutely needs
8 to be preserved and needs to be in connection with
9 this lawsuit.

10 And so what -- what needs to happen here that
11 has not happened thus far is -- is the attorneys for
12 Hamilton County have got to figure out what
13 information actually exists that -- that still exists
14 either through some combination of the district
15 attorney and their own archives that is relevant to
16 these claims against Mr. Wilkey and his codefendants.

17 And right now, at least, Mr. Hobbs you raise
18 this point. I'm not talking about pattern and
19 practice allegations that would try to make relevant
20 every alleged bad act that has ever occurred involving
21 the Sheriff's Department. But what I am totally
22 focused on is Hamilton County's duty to preserve all
23 of the evidence that is relevant to these allegations
24 against Daniel Wilkey and Deputy Goforth and any other
25 individual deputies who have been named.

1 That -- that needs to be done and needs to be
2 done immediately. That information needs to be
3 compiled, it needs to be reviewed, and then you need
4 to come back to me and tell me what's been lost and
5 what hasn't been lost.

6 There -- there's no reason for the Court to
7 be expending a lot of energy on trying to reconstruct
8 this -- this evidence or figure out what was lost when
9 the first thing that needs to happen is for you to
10 look at what you already have the tell the Court
11 what's been lost and what hasn't been lost.

12 So that needs to be done. The second thing
13 that I think needs to be done from a standpoint of
14 public confidence is to assure that the failure of
15 this server happened in the normal course of things
16 and that it wasn't a deliberate effort by somebody to
17 get rid of evidence.

18 UNIDENTIFIED MALE SPEAKER: Thank you.

19 THE COURT: Pardon me?

20 MR. KLAVER: I said thank you, Your Honor.
21 This is William Klaver. Because I don't -- I don't
22 believe a word they say so far. (inaudible) seems to
23 me and all the (inaudible) that happens to help them.
24 I don't -- I don't believe it. And -- and they kept
25 us in the dark -- (inaudible due to bad audio). We

1 don't know.

2 THE COURT: Yeah.

3 MR. KLAVER: Thank -- thank you (inaudible).

4 THE COURT: Well, I -- I understand,

5 Mr. Klaver, you've stated what I'm sure -- a thought
6 that probably some of the other Plaintiffs have, is
7 the timing does look suspicious.

8 So the -- so, first thing we need to figure
9 out is whether evidence was truly lost or whether it
10 still exists because it was preserved for the District
11 Attorney's Office or for some other reason prior to
12 the failure of that server.

13 But if evidence has been lost, we need to
14 determine why it was lost. And to that end, I don't
15 think there's anybody on this call that can shed any
16 light on that. The Sheriff's Department has stated
17 what their position is.

18 I think the only way for us to truly find
19 that out would be to retain an independent third-party
20 with -- forensic examiner who would have access to the
21 server and could go in there and look at the reason it
22 failed and whether that the information can be
23 reconstructed or it can't be reconstructed.

24 But I'm hesitant to order that that be done
25 until I know whether the evidence was actually lost or

1 whether it was already extricated from the server and
2 is preserved somewhere between the DA's office and
3 Hamilton County Sheriff's Office presently.

4 And, I guess, the third thing I would say is
5 just to reiterate that until we are in a position to
6 make that decision, I'll reiterate that the plans for
7 this data was stored, the server that failed is a
8 physical object. And what I repeated previously is
9 that that physical object, the server where the data
10 was stored, needs to be preserved, does not need to be
11 changed in any way or altered. It does need to be
12 accessible to people in the Sheriff's Department other
13 than somebody who has custody and control of it, so
14 that if we do need to bring in an independent third-
15 party forensic examiner, it will be in an unaltered
16 state from the point in time that I advised counsel
17 not to let anybody make any changes to it through the
18 time that the forensic examiner examines it.

19 So let me -- those are the three points I
20 just made. And they're all directed to the County at
21 this point. Be thinking about that for a second, and
22 let me say one other thing before I forget about it.

23 Mr. Flores, you raise the point that you have
24 served discovery requests on the County, and they
25 haven't responded to your discovery requests. Let me

1 just add a little bit of context. Generally speaking,
2 in Federal court -- I know you guys were in State
3 court originally, but after you came to Federal court,
4 normally discovery requests are placed in abeyance
5 pending your discovery planning meeting.

6 I don't know at what point in time that you
7 had a discovery planning meeting prior to the
8 scheduling conference that we had fairly recently, but
9 we addressed certain deadlines in the scheduling
10 order. Or I should more accurately say Judge McDonagh
11 (phonetic) did.

12 And so at this point in time, if -- if there
13 are discovery requests that are overdue, talking to me
14 about them in this hearing is -- is -- is not really
15 helpful. It's not an action item for me, but if you
16 file a motion to compel because somebody's overdue on
17 some discovery requests or interrogatories, the Court
18 will deal with that.

19 Right now I'm not aware of those motions
20 being pending. So let -- before I go back to the
21 County, Mr. Flores and Mr. Cavett, have you guys filed
22 any motions to compel discovery requests here in
23 Federal court?

24 MR. FLORES: For -- it's Robin Flores. I --
25 I have not, Judge.

1 THE COURT: Couldn't understand you.

2 MR. CAVETT: John Cavett, I have not.

3 THE COURT: You -- you have not, Mr. Flores?

4 MR. FLORES: That's correct, I have not --

5 THE COURT: Okay. Well, if you -- yeah.

6 Well, that's what you're going to have to do if you
7 feel like some of them are overdue. So -- so -- and
8 that will tee up that issue.

9 Now, as -- as to the County, counsel, what --
10 what does the County intend to do to try to determine
11 whether information has actually been lost or whether
12 it's within some combination of your control and that
13 of Neil Pinkston?

14 MR. HOBBS: Your Honor, this is quite
15 (inaudible) hearsay, but as think I tried say before
16 and on previous occasions, we do not believe that any
17 information -- I'm sorry, video information
18 relative -- or documentation relative to these cases
19 has, in fact, been lost.

20 We will endeavor to obtain -- I guess we're
21 going to have to do -- (inaudible). I think the
22 easiest thing for us to do is -- is compile everything
23 we've got and send it to everybody. These cases are
24 consolidated. We'll make sure everybody has
25 everything we have.

1 THE COURT: All right. And let me ask, the
2 discrepancy that I'm hearing is, is it sounds like for
3 whatever reason that the DA's office may have more
4 video footage than the -- than you -- you do. And
5 when I say you, I'm talking to the Hamilton County
6 Sheriff's Office.

7 MR. HOBBS: (Inaudible due to cross talking)
8 And that may be correct. But now understand and
9 pardon me for interrupting, I -- I am informed that
10 everything the DA has, the sheriff has.

11 THE COURT: Well, I -- I need you to verify
12 that.

13 UNIDENTIFIED MALE SPEAKER: (Inaudible due to
14 cross talking).

15 UNIDENTIFIED MALE SPEAKER: That's actually
16 what the sheriff has said all along. He just stated
17 that he had a hundred and something hours, and now
18 we're discovering that Pinkston has over 500. There's
19 a discrepancy there.

20 MR. HOBBS: Is that Mr. Klaver? Is that
21 Mr. Klaver?

22 MR. KLAVER: Yes, it was.

23 MR. HOBBS: Mr. Klaver, (inaudible due to
24 cross talking).

25 UNIDENTIFIED MALE SPEAKER: You just said

1 that the -- that Sheriff's Department has the same
2 thing as the district attorney has. You made that
3 statement here today. You just stated that you had
4 the same thing that the district attorney has.

5 THE COURT: Well, here -- here's the
6 discrepancy. Earlier in the conversation counsel for
7 the County indicated that they thought they had
8 directionally about 180 hours of footage. And then --

9 MR. HOBBS: At least.

10 THE COURT: At least. But that's a pretty
11 big difference from 500 hours that -- that we've also
12 been told that the District Attorney's Office has.
13 And so that's -- that's something that needs to be
14 reconciled to see if -- if there's a difference
15 between the amount of footage that the district
16 attorney has and that which the Hamilton County
17 Sheriff's Department has.

18 Because -- because we need to at best as
19 possible re-create all of the footage that was lost
20 from the server. And we -- and -- and the only way to
21 do that is -- is -- is to figure out what footage
22 still exists in any repository, whether it's the
23 district attorney's office or the sheriff department
24 or any other place it might exist.

25 And we need to look at it and determine

1 whether it reflects all of these stops that Mr. Wilkey
2 made or whether it apparently does not reflect all the
3 stops that Mr. Wilkey made.

4 UNIDENTIFIED MALE SPEAKER: Your Honor --

5 THE COURT: And -- and County let me just say
6 this. I mean, the legal duty that the County has is
7 to preserve the evidence. And at this point, I know
8 evidence has been lost, but I -- the Court does not
9 know in truth whether the evidence has been lost,
10 whether it still exists, and the only persons who can
11 tell me that are the county's attorneys. That is your
12 burden.

13 It -- I'm not blaming either one of you for
14 failure of a server. You had nothing to do with that.
15 But as soon as these lawsuits were filed, you as the
16 county's attorney had a duty to make sure that the
17 County preserve this evidence.

18 Now that I know a server failed and video
19 footage for two or three years has been lost, I need
20 you to figure out what evidence was lost and let the
21 Court know that. That is your duty.

22 And I -- I can't say it strongly enough, but
23 I'm not sure I'm making myself clear enough about
24 this.

25 MR. HOBBS: Yes, we are clear Your Honor.

1 THE COURT: Okay.

2 MR. HOBBS: We -- we will endeavor to provide
3 everything we have, and we will report to the Court
4 and the parties anything we think we do not have.

5 THE COURT: Okay.

6 MR. HOBBS: I (inaudible) we can do it.

7 THE COURT: How much time do you think you
8 need, Counsel, to do that?

9 MR. HOBBS: Unfortunately, Your Honor, we
10 don't know -- we don't know what tomorrow brings. We
11 understand there's a meeting today. We may be -- we
12 may be sent home. So I'm not --

13 THE COURT: Well, I'll tell you what. Why
14 don't you -- what I'd like for you to do is, is
15 provide a -- let's do a weekly status report on your
16 efforts. I realize that the Covid 19 pandemic is
17 greatly complicating everybody's work schedules. I
18 get it. There's something that can be worked around.

19 This is a front-burner item, and is certainly
20 not going to be an excuse for the -- for the Sheriff's
21 Department to lose any other evidence that -- that we
22 might need for these cases. So I think everybody
23 understands that.

24 But it may, of course, result in some
25 unavoidable delays when people are physically told

1 that they cannot come to work. That's a problem.
2 Because we do need people physically to be present to
3 review things.

4 So, Mr. Hobbs and Ms. Milling, I would ask
5 that by Wednesday of next week you file a very short
6 something status report with the Court letting us know
7 of your efforts to compile the video footage that does
8 exist to ensure that no evidence is lost, and, you
9 know, what -- what your anticipated timetable will be.

10 And then we'll just -- we're going to stay on
11 this until -- until we can figure out a realistic date
12 by which this can be done.

13 MR. HOBBS: Your Honor, if I may -- if I may
14 ask, I think it would be easier on everybody involved
15 if we disseminated the information (inaudible) or
16 documentation or video whatever as soon as we get it.
17 We will start from scratch, and we will -- in some
18 cases it's been provided, it does not matter.

19 MS. MILLING: Your Honor, would you be okay
20 with us providing it without reviewing it and just say
21 here, here's what we have?

22 THE COURT: Well, no. What I want you to
23 do --

24 MS. MILLING: (Inaudible due to cross
25 talking) --

1 THE COURT: Ms. Milling, hang on a second.

2 The risk in doing it piecemeal is that we're not going
3 to be able to figure out exactly what has been
4 produced. What I'd like you to do is to compile
5 everything to try to determine what's -- what has been
6 lost and what still remains.

7 MR. KLAVER: Your Honor (inaudible) this is
8 William Klaver. I would like to ask that any of the
9 information goes to the Court because -- before it
10 reaches any of us.

11 THE COURT: Well, here's -- Mr. Klaver, yeah,
12 I understand what you're asking, but that's not how
13 things work. Discovery generally is sent from one
14 party to another. It -- the only thing unusual about
15 the situation is that we have a situation where a
16 server failed and lots of video footage was lost, and
17 that's why the Court is intervening at this point.

18 I don't need all the information sent to me.
19 What I need is a synopsis of what the County has done
20 to find the lost evidence, and they need to look at it
21 and then tell the Court what has been -- what they
22 believe has been lost and what still remains, so
23 that -- so that I can determine under rule 37(e) what
24 additional steps the Court needs to do.

25 And that could take a variety of forms. It

1 may -- it may be me appointing a third-party forensic
2 examiner to come in and see if other evidence can be
3 reconstructed. So that's an option. And then another
4 option is if I find that evidence has been lost under
5 37(e), it may lead to some sanctions against the
6 County.

7 But we don't need to talk about sanctions yet
8 until we determine -- until we make a determination as
9 to whether evidence has truly been lost or whether it
10 can be reconstructed, okay? Everybody understand me?

11 UNIDENTIFIED MALE SPEAKER: Thank you, Your
12 Honor.

13 THE COURT: All right.

14 MR. FLORES: Your Honor, this is Robin
15 Flores. May I make a suggestion as to how that may
16 occur as far as trying to just determine what they
17 have and what's been lost?

18 THE COURT: Yeah, if you have a practical
19 suggestion along those lines, go ahead.

20 MR. FLORES: Yes, sir. Again, I base this
21 off my direct participation with the County and my
22 client talking with the district attorney and my
23 clients and the investigators is that the DA got over
24 500-something hours of video evidence over a period of
25 over a year involving Mr. Wilkey.

1 And it took some effort for the DA to get it,
2 but they finally did. If we could use -- if the DA is
3 going to cooperate with Mr. Hobbs and Ms. Milling, we
4 can find out what the County has, what the DA actually
5 has and then compare that to what the -- Ms. Milling
6 and Mr. Hobbs, I believe that they are that they
7 got -- in other words, if they -- if the County has
8 180 hours that they can put their hands on, and the
9 district attorney has about 300 hours more, then we --
10 that may give us a starting point as to what -- what
11 the County can do from that point on to find out if
12 the rest of this information, you know, the other
13 300-plus hours are missing.

14 That may be a starting point if I could
15 suggest that. And if the DA will cooperate. Sounds
16 like they would -- they would, but that's just a
17 suggestion.

18 THE COURT: Well, I -- I -- thank you,
19 Mr. Flores. I think that's what I did suggest was a
20 comparison of those two banks of data, the -- that the
21 DA has in his possession and compared those that the
22 Hamilton County Sheriff's Department has in its
23 possession.

24 I do think that the comparison needs to be
25 made. And then I think the Sheriff's Department needs

1 to also really think about whether there's any other
2 place that these -- that any of this video evidence or
3 other evidence related to these incidents may exist.

4 And -- and I would say this to the county's
5 attorney, if -- I would not anticipate any resistance
6 from the -- from the DA, but this is -- this
7 is the Hamilton County Sheriff's Department's
8 evidence.

9 I presume that the only reason the DA has it
10 is because it was given to them by the Hamilton County
11 Sheriff's Office. And at some point the Hamilton
12 County Sheriff's Office lost its copy of that
13 evidence. Or some of it.

14 And so I wouldn't anticipate that the DA
15 would have a problem with restoring to the County a
16 copy of whatever evidence the sheriff's department has
17 given to the DA. But if you do run into a problem
18 with that, let the Court know and maybe we'll try and
19 help work it out.

20 MS. MILLING: We will, Your Honor.

21 THE COURT: All right, Counsel. I think we
22 have a -- I believe we have a plan in place to try to
23 recover the lost evidence and determine what was lost.

24 Is there -- while we're convened here
25 together, does anyone else have anything they would

1 like to bring up?

2 UNIDENTIFIED MALE SPEAKER: Your Honor, are
3 you going to put this into an order?

4 THE COURT: Yes.

5 UNIDENTIFIED MALE SPEAKER: That would be --

6 MR. KLAVER: It's William Klaver. I -- I
7 have nothing, Your Honor.

8 THE COURT: Okay. All right, then. We will
9 adjourn this hearing, and I appreciate everybody's
10 cooperation. You guys did good job not talking over
11 each other, and I just would hope everybody will stay
12 safe and healthy. Thank you.

13
14 (Hearing concluded.)
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1 R E P O R T E R ' S C E R T I F I C A T E
23 STATE OF TENNESSEE
45 COUNTY OF RUTHERFORD
6

I, Denise Parker Gonzalez, Licensed Court
Reporter, with an office in Murfreesboro, Tennessee,
certify that the foregoing is a correct transcript from
the electronic sound recording of the proceedings in the
above-entitled matter as provided to me by counsel for the
plaintiff.

A handwritten signature in blue ink that appears to read "Denise Parker Gonzalez".

DENISE PARKER GONZALEZ
Paradox Reporting
Tennessee Licensed Court Reporter
LCR#578, Expires 06/30/2016
Notary Public
State of Tennessee at Large
My Commission Expires 04/24/2018

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